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MAY 20 2005

In re Application of :
Patrick H. Wnek :
Application No. 09/764,718 : ON PETITION **OFFICE OF PETITIONS**
Filed: January 18, 2001 :
Attorney Docket No. 5887.00 :

This is a decision in response to the petition under 37 CFR 1.137(b), filed March 14, 2005, to revive the above-identified application.

The petition is granted.

A final Office action was mailed October 17, 2002. In response to the final Office action, Applicant filed a Notice of Appeal which was received in the Office on January 16, 2003. The deadline for filing the appeal brief was April 17, 2002.

On March 17, 2003, Applicant filed a request for a two (2) month extension-of-time and an Appeal Brief. The Appeal Brief was defective. Applicant was so notified in a Notification of Noncompliance with 37 CFR 1.192(c), mailed June 3, 2003. Applicant filed a Response to Notification of Non-Compliance With 37 CFR 1.192(c) on June 23, 2003 which included a Replacement Appeal Brief. The Replacement Appeal Brief was also not in compliance with 37 CFR 1.192(c). Applicant was so notified in an Office communication mailed July 21, 2003. The Office communication also informed Applicant that the application was now abandoned. See MPEP §§ 706.07(h) and 1215.01.

Applicant filed a petition to withdraw the holding of abandonment of the application, along with a Second Replacement Applicant's Brief on Appeal, on August 7, 2003. In the petition applicant argued that the "replacement Brief filed on June 23, 2003" complied with 37 CFR 1.192(c)(7). The petition was granted in a Decision mailed September 2, 2003, because a review of the file revealed that Applicant's time to file an appeal brief included extensions-of-time under 37 CFR 1.136, and the

maximum period to file an appeal brief had not expired. As such, the application was not abandoned.


The Second Replacement Applicant's Brief on Appeal, filed August 7, 2003, failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action mailed October 29, 2003. Applicant was further advised that the time for filing an appeal brief continued to run from the filing of the Notice of Appeal. A Notice of Abandonment was mailed on October 15, 2004. The Notice of Abandonment included an Office communication informing Applicant that the application was abandoned for failure to timely file a proper Appeal Brief.

With the instant petition, Applicant has filed a Request for Continued Examination ("RCE") and a submission in the form of an Amendment.

The petition fee, \$1500.00, and RCE filing fee, \$790.00, have been charged to deposit account 09-0528 as authorized in the Fee Transmittal filed with the petition.

This application is being returned to Technology Center 3727 for processing of the RCE and Amendment in due course.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3232.


Derek L. Woods
Petitions Attorney
Office of Petitions